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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS GERMAN SANCHEZ,

Defendant and Appellant.

G039525

(Super. Ct. No. 05NF3219)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, M. Marc Kelly, Judge. Affirmed.

Doris M. Frizzell, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Barry Carlton and Susan Miller, Deputy Attorneys General, for Plaintiff and Respondent.

Carlos German Sanchez was convicted of premeditated and deliberate attempted murder (count 1; Pen. Code, §§ 664, subd. (a), 187, subd. (a));<sup>1</sup> assault with an ice pick or awl (count 2; § 245, subd. (a)(1)); assault with a tile cutter or utility knife (count 3; § 245, subd. (a)(1)); domestic battery with corporal punishment (count 4; § 273.5, subd. (a)); and child abuse and endangerment (count 5; § 273a, subd. (a)). As to counts 1 and 4, under section 12022, subdivision (b)(1), the jury found Sanchez personally used an ice pick and a tile cutter within the meaning of section 1192.7. As to counts 1 through 4, pursuant to section 12022.7, subdivision (e), the jury also found Sanchez personally inflicted great bodily injury under circumstances involving domestic violence.

On count 1, the trial court sentenced Sanchez to life in prison with the possibility of parole. The court imposed four additional years to be served consecutively on the great bodily harm enhancement and one additional year to be served consecutively on the personal use of a weapon allegation. On the remaining counts, the court imposed concurrent sentences resulting in a total sentence of life in prison plus five years. Sanchez's sole contention on appeal is the court erroneously imposed concurrent sentences on counts 2 through 4. He contends the sentences on those counts should have been stayed pursuant to section 654 rather than imposed concurrently. Finding no error, we affirm the judgment.

## FACTS

Sanchez and the victim, Evangelina Camacho, had been involved in a serious romantic relationship in Columbia and in California for roughly six years when Sanchez moved to New York for work leaving Camacho in California. Although Camacho did not want Sanchez to leave and go to New York, they parted on good terms.

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<sup>1</sup> All further statutory references are to the Penal Code.

After learning Sanchez' ex-wife and daughter were living in New York, Camacho began dating someone else.

Soon thereafter, Camacho spoke with Sanchez in New York over the telephone and told him she was ending their relationship. Sanchez was not happy about Camacho's desire to end their relationship and told her so. Sanchez later learned Camacho was involved with his former boss, Jose Santana. Sanchez called Santana and asked him to stop seeing Camacho. Santana agreed to end the relationship, but told Sanchez if he wanted to resume his relationship with Camacho he should return to California. After a short period of time, Sanchez returned to California, but he did not immediately return to Camacho's apartment. He first stayed for a week at Camacho's sister's house. He then moved back into Camacho's apartment despite the fact Camacho had made it very clear she would not resume a sexual relationship with him.

Sanchez was offered the opportunity to resume working for Santana, and he accepted the offer. Unfortunately, on the day Sanchez was to resume his old job, things went seriously awry. Early in the morning, Camacho and Sanchez had coffee and smoked a cigarette together. Sanchez then went into the bathroom to get ready for work. Sanchez was in the shower when Santana called. While Camacho was on the telephone with Santana, Sanchez came out of the bathroom. Camacho showed Sanchez it was Santana's number on the telephone, and she handed the telephone to him. There was a second telephone call a few minutes later between Sanchez and Santana, wherein Santana wanted to be assured Sanchez would be on time for work.

Camacho had planned to drive Sanchez to work. When Sanchez was finished getting ready for work, he came into the kitchen. Camacho testified Sanchez kept looking at her in the kitchen, and she "told him to relax, that everything was going to be fine[.]" They hugged, and then Sanchez placed his hands on Camacho's shoulder and back, and guided her into the bedroom. Once in the bedroom, Sanchez pushed Camacho towards the bed and she fell facedown onto the bed. When Camacho realized Sanchez

had a pocket knife in his hand and was about to cut her, she tried to grab the knife, cutting her hand in the process. Camacho managed to escape and she ran out of the apartment and outside toward the front gate. However, Sanchez soon caught up with her, grabbed her, pulled her hair, and cut her on the throat. Camacho was able to get away again, but Sanchez pursued her. When he caught her, Sanchez pushed her up against the wall, put his hand on her forehead, and cut her neck with the same blue knife. As Sanchez was cutting her, Camacho heard him laugh. He let her go when Camacho said she was dying.

Camacho headed back toward her apartment, but collapsed and fell in front of her neighbor's apartment because she had no strength in her legs. She asked her son to run into the apartment and bring her the telephone, which he did. She called Santana and told him Sanchez was trying to kill her. As she was lying on the ground, Sanchez went into the apartment. When he returned he had a pointed sharp object in his hand (later determined to be an awl) and he began hitting Camacho's chest with it. Sanchez then cut himself and laid down on top on Camacho. The police arrived and found Camacho and Sanchez still both lying on the ground covered in blood.

Sanchez testified he remembered being in the kitchen with Camacho the morning of the incident, and the next thing he remembered was waking up in the hospital. Several defense witnesses testified Sanchez was a non-violent, loving person.

The defense called a forensic clinical psychologist, Dr. Francisco Gomez, who evaluated Sanchez. Gomez testified Sanchez was very unstable emotionally, and very impulsive. He characterized the emotional instability as a borderline personality trait. Gomez opined "some people under a highly aroused emotional state may disassociate; that is, they do not remember acting." Gomez concluded Sanchez was not faking his lack of memory of the attack.

## DISCUSSION

Sanchez's sole contention on appeal is that pursuant to section 654 the sentences on counts 2 through 4 should have been stayed, rather than imposed concurrently. Section 654, subdivision (a), provides in pertinent part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall that act or omission be punished under more than one provision." This statute prohibits multiple punishment for an indivisible course of conduct with a common intent and objective, even though the conduct at issue violates more than one statute. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1207-1208.) "The question of whether the defendant held multiple criminal objectives is one of fact for the trial court, and, if supported by any substantial evidence, its finding will be upheld on appeal." (*People v. Herrera* (1999) 70 Cal.App.4th 1456, 1466.)

In *People v. Nubla* (1999) 74 Cal.App.4th 719, it was alleged Nubla committed several separate acts of violence upon his wife. Nubla was angered by his wife's intention to leave him. (*Id.* at p. 723.) The violence began when Nubla pulled the telephone away from his wife as she was attempting to call the police. (*Ibid.*) He then put his hand over her mouth and pushed her facedown onto the bed, causing her nose to bleed. (*Ibid.*) While lying facedown on the bed, the victim felt Nubla push something cold and hard into the back of her head. (*Ibid.*) Nubla then turned his wife "faceup, and put a gun in her mouth, cutting her lip and chipping her tooth." (*Ibid.*) The *Nubla* court concluded: "There is no question here but that [Nubla] committed several acts of violence against his wife. He pushed her onto the bed, causing her nose to bleed. He pushed a gun into the back of her head. He turned her over and pushed the gun into her mouth. [Nubla's] offenses, although not sexual in nature, are somewhat analogous to sex offenses in that several similar but separate assaults occurred over a period of time." (*Id.* at pp. 730-731.) It found imposition of separate sentences for the offense of assault with

a deadly weapon and the offense of corporal injury to a spouse. (*Id.* at p. 731 [Nubla’s “act of pushing his wife onto the bed and placing the gun against her head was not done as a means of pushing the gun into her mouth, did not facilitate that offense and was not incidental to that offense. The trial court was entitled to conclude that each act was separate for purposes of . . . section 654”].)

Here, as in *Nubla*, Sanchez committed separate and distinct attacks. Sanchez attacked Camacho at different locations and with separate weapons. He first brought Camacho into the bedroom and threw her on the bed whereupon he attempted to stab her. In attempting to fend off this attack, Camacho sustained an injury to her hand. Second, Sanchez pursued Camacho as she fled the apartment, and when he caught her, he pulled her hair and cut her throat. The third attack occurred after Camacho managed to temporarily escape again. Sanchez pushed Camacho up against a wall and cut her neck once more with the same blue knife. Finally, Sanchez attacked Camacho a fourth time as she tried to return to her apartment, but she had collapsed in front of a neighbor’s apartment. Sanchez retrieved a new weapon (an awl) from their apartment and attacked Camacho as she lay helpless on the ground.

Sanchez correctly states “counts 2 through 4 all related to [Sanchez’s] actions against . . . Camacho.” He acknowledges there were two different weapons used, but asserts, without elaboration, the actions giving rise to counts 2 through 4 were the same actions as those underlying count 1. We disagree. As discussed above, individual and distinct acts of violence can be the basis for separate punishment. A single individual can be the victim of multiple crimes. The facts support the conclusion Camacho was the victim of multiple crimes at different times and places and committed by means of different weapons. Given the distinct nature of the various attacks, we find no error in the court’s imposition of separate, albeit concurrent, sentences on counts 2 through 4.

DISPOSITION

The judgment is affirmed.

O'LEARY, J.

WE CONCUR:

SILLS, P. J.

FYBEL, J.